IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 4093 of 2007(J)

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OS.209/2004 of MUNSIFF'S COURT, KALPETTA

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PETITIONER:

KUKERI MUHAMMED, KUKERI HOUSE,
KUNNATHIDAVAKA AMSOM DESOM,
VYTHIRI TALUK, WAYANAD DISTRICT
REP. BY MUKTHIAR AGENT P. ALI,
S/O.ENI, AGED 67 YEARS, PARAMMAL
HOUSE, KOLICHAL, SUGANDHAGIRI P.O.,
VYTHIRI TALUK, WAYANAD DISTRICT.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS:

1. SMT. KUNHAMI, KOCHIN VEEDU,
   KOLICHAL, KUNNATHIDAVAKA VILLAGE.

2. SMT. AYISHUMMA, PUTHENPURAKKAL
   HOUSE, KUNNATHIDAVAKA VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

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W.P.(C)No. 4093 of 2007 K

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**JUDGMENT**

This writ petition is filed against Exhibit P4 order passed by the Munsiff, Kalpetta on I.A.No. 1077/06 in O.S.No.209/04 filed by the Power of Attorney Holder on behalf of the petitioner/ plaintiff seeking leave for him to conduct the case and to give evidence in the suit on behalf of the petitioner. A copy of the Power of Attorney was also produced in the court below. The learned Munsiff has, vide order impugned, dismissed the said IA, holding that the Power of Attorney Holder, who is not a party to the suit, cannot be permitted to give evidence on behalf of the petitioner/ plaintiff, since Order III Rule 2 of the Code of Civil Procedure enables a person, who is holding Power of Attorney, only to act in respect of the person authorised for the limited purpose of

appearance, application and acts on behalf of that person. It is contended by the counsel for the petitioner that the said approach is incorrect.

2. For the sake of convenience in reference Order III Rule 2 is extracted below:

> "The recognised agents of parties by whom such appearances, applications and acts may be made or done are-
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> (a) persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;
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> (b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts."

3. Order III Rule 2 of the CPC speaks of recognised agents of parties, by whom such appearances, applications and acts may be made or done and Clauses (a) and (b) thereunder specifies the category of persons, who are so recognised under Rule 2. Such persons, no doubt, can make appearances, applications and do such acts as are necessary for the due conduct of the suit and it is not that they are precluded from giving evidence on behalf of the person conferring them power under the Power of Attorney as a witness, though it is true that the evidence that they can give are limited to matters on which they are competent to give evidence, namely, only on those matters on which they have got direct knowledge and not on matters on which he has got information only. Such act of giving evidence is not giving evidence in the place of and instead of the principal. The above view is consistent also with the decision of the Apex Court in **Janki Vashdeo v. Indusind Bank** (2005 (2) KLT 265). In the circumstances, the order

impugned is unsustainable to the above extent and is set aside.

This writ petition is disposed of accordingly.

19th February, 2007 (K.P.Balachandran, Judge)

tkv